

91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If the principal place of business of a CMV owner or operator, or an intermodal equipment provider, is in a foreign country, the notice will be delivered to the designated agent of the CMV owner or operator or intermodal equipment provider.

(c) A CMV owner or operator, or intermodal equipment provider that continues to operate in interstate commerce in violation of this section may be subject to additional sanctions under paragraph IV of (i) appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under 11 U.S.C. chapter 11. CMV owners or operators, or intermodal equipment providers, in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (i.e., chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

[73 FR 76819, Dec. 17, 2008, as amended at 74 FR 68708, Dec. 29, 2009; 78 FR 58481, Sept. 24, 2013]

§ 386.84 Sanction for failure to pay civil penalties or abide by payment plan; suspension or revocation of registration.

(a)(1) *General rule.* The registration of a broker, freight forwarder, for-hire motor carrier, foreign motor carrier or foreign motor private carrier that fails to pay a civil penalty in full within 90

days after the date specified for payment by the FMCSA's final agency order, will be suspended starting on the next (i.e., the 91st) day. The suspension continues until the FMCSA has received full payment of the penalty.

(2) *Civil penalties paid in installments.* The FMCSA Service Center may allow a respondent broker, freight forwarder, for-hire motor carrier, foreign motor carrier or foreign motor private carrier to pay a civil penalty in installments. If the respondent fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. The registration of a respondent that fails to pay the remainder of its civil penalty in full within 90 days after the date of the missed installment payment is suspended on the next (i.e., the 91st) day. The suspension continues until the FMCSA has received full payment of the entire penalty.

(3) *Appeals to Federal Court.* If the respondent broker, freight forwarder, for-hire motor carrier, foreign motor carrier or foreign motor private carrier appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so directs.

(b) *Show Cause Proceeding.* (1) The FMCSA will notify a broker, freight forwarder, for-hire motor carrier, foreign motor carrier or foreign motor private carrier in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due will result in the suspension of the respondent's registration.

(2) The notice will order the respondent to show cause why its registration should not be suspended on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11,

title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If a respondent's principal place of business is in a foreign country, it will be delivered to the respondent's designated agent.

(c) The registration of a broker, freight forwarder, for-hire motor carrier, foreign motor carrier or foreign motor private carrier that continues to operate in interstate commerce in violation of this section after its registration has been suspended may be revoked after an additional notice and opportunity for a proceeding in accordance with 49 U.S.C. 13905(c). Additional sanctions may be imposed under paragraph IV(i) of Appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11, title 11, United States Code. Brokers, freight forwarders, for-hire motor carriers, foreign motor carriers or foreign motor private carriers in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (*i.e.*, chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

[65 FR 78428, Dec. 15, 2000, as amended at 78 FR 60232, Oct. 1, 2013]

APPENDIX A TO PART 386—PENALTY SCHEDULE; VIOLATIONS OF NOTICES AND ORDERS

I. Notice To Abate

Violation—Failure to cease violations of the regulations in the time prescribed in the notice. (The time within to comply with a notice to abate shall not begin to run with respect to contested violations, *i.e.*, where there are material issues in dispute under § 386.14, until such time as the violation has been established.)

Penalty reinstatement of any deferred assessment or payment of a penalty or portion thereof.

II. Subpoena

Violation—Failure to respond to Agency subpoena to appear and testify or produce records.

Penalty—minimum of \$1,000 but not more than \$10,000 per violation.

III. Final Order

Violation—Failure to comply with Final Agency Order.

Penalty—Automatic reinstatement of any penalty previously reduced or held in abeyance and restoration of the full amount assessed in the Notice of Claim less any payments previously made.

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to \$2,100 per violation.

(For purposes of this violation, the term "driver" means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to \$16,000 per violation.

(This violation applies to motor carriers, including an independent contractor who is not a "driver," as defined under paragraph IVa above.)

c. Violation—Operation of a commercial motor vehicle or intermodal equipment by a driver after the vehicle or intermodal equipment was placed out-of-service and before the required repairs are made.

Penalty—\$2,100 each time the vehicle or intermodal equipment is so operated.

(This violation applies to drivers as defined in IVa above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle or intermodal equipment placed out-of-service before the required repairs are made.

Penalty—Up to \$16,000 each time the vehicle or intermodal equipment is so operated after notice of the defect is received.

(This violation applies to intermodal equipment providers and motor carriers, including an independent owner-operator who is not a "driver," as defined in IVa above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to \$750 per violation.